

FOLGER LEVIN & KAHN LLP
Lisa M. van Krieken (CSB No. 121808, lvankrieken@flk.com)
Genevieve E. Evarts (CSB No. 226874, gevarts@flk.com)
Embarcadero Center West
275 Battery Street, 23rd Floor
San Francisco, CA 94111
Telephone: (415) 986-2800
Facsimile: (415) 986-2827

Attorneys for Defendants Hyatt Corporation
dba Hyatt Regency San Francisco Airport, Jimmy
Flores, Ron Gray, Tom Phipps and Jose Reyes

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

THROY OTANES,

Plaintiff,

v.

HYATT REGENCY HOTEL
(BURLINGAME), JIMMY FLORES,
RON GRAY, TOM PHIPPS, JOSE
REYES, and DOES ONE through FIFTY,

Defendants.

Case No. CV 07 5936 MHP

**DEFENDANT HYATT CORPORATION'S
ANSWER TO PLAINTIFF'S COMPLAINT
FOR WRONGFUL DISCHARGE ARISING
FROM BREACH OF CONTRACT,
BREACH OF COVENANT OF GOOD
FAITH & FAIR DEALING, RACE-BASED
DISCRIMINATION, DISCRIMINATION
BASED ON SEX, AGE, AND SEXUAL
ORIENTATION, INTENTIONAL
INFLECTION OF EMOTIONAL
DISTRESS, AND FAILURE TO PREVENT
DISCRIMINATION**

Complaint Filed in State Court: May 15, 2007

Defendant Hyatt Corporation dba Hyatt Regency San Francisco Airport ("Defendant Hyatt" or the "Hotel") (erroneously named herein as "Hyatt Regency Hotel (Burlingame)") hereby answers the Complaint for Wrongful Discharge Arising from Breach of Contract, Breach of Covenant of Good Faith and Fair Dealing, Raced-Based Discrimination, Discrimination Based on Age, Sex, Sexual Orientation, Intentional Inflection of Emotional Distress, and Failure to Prevent Discrimination ("Complaint") filed by plaintiff Throy Otanes ("Plaintiff") in the above-captioned matter as follows:

ANSWER TO PARAGRAPHS ENTITLED "JURISDICTIONAL ALLEGATIONS"

1. Answering Paragraph 1 of the Complaint, Defendant Hyatt admits that the Hyatt

1 Regency San Francisco Airport hotel does business in the County of San Mateo, State of
2 California.

3 2. Answering Paragraph 2 of the Complaint, Defendant Hyatt admits that Jimmy
4 Flores, Ron Gray, Tom Phipps, and Jose Reyes are individuals and employees of Hyatt
5 Corporation dba Hyatt Regency San Francisco Airport.

6 3. Defendant Hyatt has no information or belief on the subject sufficient to enable it
7 to answer the allegations contained in Paragraph 3 of the Complaint, and basing its denial on that
8 ground, denies generally and specifically each and every allegation contained in said paragraph.

9 4. Defendant Hyatt denies generally and specifically each and every allegation
10 contained in Paragraph 4 of the Complaint, except that Defendant Hyatt asserts that Plaintiff was
11 a union employee covered by a written collective bargaining agreement between International
12 Union of Operating Engineers, AFL-CIO, Stationary Engineers, Local 39 and the Hyatt Regency
13 San Francisco Airport ("the hotel"), which written agreement covered the terms and conditions of
14 Plaintiff's employment in San Mateo County, California.

15 5. Defendant Hyatt denies generally and specifically each and every allegation
16 contained in Paragraph 5 of the Complaint.

17 6. Defendant Hyatt has no information or belief on the subject sufficient to enable it
18 to answer the allegations contained in Paragraph 6 of the Complaint, and basing its denial on that
19 ground, denies generally and specifically each and every allegation contained in said paragraph.

20 7. Defendant Hyatt has no information or belief on the subject sufficient to enable it
21 to answer the allegations contained in Paragraph 7 of the Complaint, and basing its denial on that
22 ground, denies generally and specifically each and every allegation contained in said paragraph.

23 **ANSWER TO PARAGRAPHS ENTITLED "GENERAL ALLEGATIONS"**

24 8. Answering Paragraph 8 of the Complaint wherein Plaintiff incorporates
25 Paragraphs 1 through 7 of the Complaint, Defendant Hyatt realleges and hereby incorporates by
26 this reference its responses to said paragraphs as though fully set forth herein.

27 9. Answering Paragraph 9 of the Complaint, Defendant Hyatt admits that Plaintiff
28 was hired by the Hyatt Regency San Francisco Airport on February 7, 1997 as a Houseperson and

1 later became a Doorperson in August 1999.

2 10. Defendant Hyatt has no information or belief on the subject sufficient to enable it
3 to answer the allegations contained in Paragraph 10 of the Complaint, and basing its denial on
4 that ground, denies generally and specifically each and every allegation contained in said
5 paragraph, except that Defendant Hyatt admits that Plaintiff is female and that she was openly
6 gay and her sexual orientation was known to many co-workers.

7 11. Defendant Hyatt has no information or belief on the subject sufficient to enable it
8 to answer the allegations contained in Paragraph 11 of the Complaint, and basing its denial on
9 that ground, denies generally and specifically each and every allegation contained in said
10 paragraph, except that Defendant Hyatt admits that Plaintiff began work as a utility engineer at
11 the hotel in October 1999.

12 12. Defendant Hyatt has no information or belief on the subject sufficient to enable it
13 to answer the allegations contained in Paragraph 12 of the Complaint, and basing its denial on
14 that ground, denies generally and specifically each and every allegation contained in said
15 paragraph, except that Defendant Hyatt admits that as a utility engineer, Plaintiff was tasked to do
16 various minor repair work and minor electrical repair work. However, Defendant Hyatt denies
17 that minor electrical work does not include lockout/tagout electrical work, and specifically alleges
18 that Plaintiff was trained many times in lockout/tagout procedures at the hotel, as were other
19 utility engineers.

20 13. Defendant Hyatt has no information or belief on the subject sufficient to enable it
21 to answer the allegations contained in Paragraph 13 of the Complaint, and basing its denial on
22 that ground, denies generally and specifically each and every allegation contained in said
23 paragraph, except that Defendant Hyatt admits that when Plaintiff worked as a utility engineer at
24 the hotel, she initially was assigned Unit 8 work (rooms preventative maintenance), but at her
25 request, performed both Unit 7 and Unit 8 work, which are both utility engineer assignments.

26 14. Defendant Hyatt denies specifically and generally each and every allegation
27 contained in paragraph 14 of the Complaint, except that Defendant Hyatt admits that Plaintiff was
28 initially doing Unit 8 work until she requested to be assigned to Unit 7 work in 2002. Defendant

1 Hyatt denies that Plaintiff did no Unit 7 work prior to 2002. Defendant Hyatt denies that Plaintiff
2 was doing her work satisfactorily and alleges that Plaintiff frequently requested help from
3 Individual Defendants Tom Phipps, Jimmy Flores, Jose Reyes (the "Individual Defendants") and
4 other employees when she was performing her work as a utility engineer.

5 15. Defendant Hyatt denies generally and specifically each and every allegation
6 contained in Paragraph 15 on page 4 of the Complaint, except that Defendant Hyatt admits that
7 Individual Defendant Jose Reyes is a utility engineer. Individual Defendants Tom Phipps and
8 Ron Gray are maintenance engineers, and Individual Defendant Jimmy Flores is a painter.
9 Defendant Hyatt also admits that in 2005, Mark Hergert was promoted to Assistant Director of
10 Engineering and assumed supervisory responsibilities in the hotel's engineering department.

11 16. Defendant Hyatt has no information or belief on the subject sufficient to enable it
12 to answer the allegations contained in Paragraph 16 on page 4 of the Complaint, and basing its
13 denial on that ground, denies generally and specifically each and every allegation contained in
14 said paragraph, and Defendant Hyatt further asserts that Plaintiff never made any such allegations
15 at any time during her employment.

16 17. Defendant Hyatt denies generally and specifically each and every allegation
17 contained in Paragraph 17 on page 4 of the Complaint, and further denies that Plaintiff ever made
18 any such allegations about Defendant Jimmy Flores at any time during her employment, except
19 that Defendant Hyatt admits that at some point, Plaintiff complained to the Hotel's Human
20 Resources department alleging that two other engineering employees, "Al" and "Arnel", were
21 coming in to guest rooms in which she was working, borrowing tools, gossiping, annoying her,
22 telling her that Unit 7 work was very hard, and asking her if Individual Defendant Jimmy Flores
23 (a painter), was doing his job on Sundays (a day that she worked with Mr. Flores), and that she
24 also complained that Mr. Flores sometimes talked to her as well, telling her that Unit 7 work was
25 harder than Unit 8 work. Defendant Hyatt has no information or belief on the subject sufficient to
26 enable it to answer the allegation contained in the last sentence of Paragraph 17 on page 4 of the
27 Complaint, and basing its denial on that ground, denies generally and specifically each and every
28 allegation contained in said sentence.

1 18. Defendant Hyatt has no information or belief on the subject sufficient to enable it
2 to answer the allegations contained in Paragraph 18 on page 5 of the Complaint, and basing its
3 denial on that ground, denies generally and specifically each and every allegation contained in
4 said paragraph, and Defendant Hyatt further asserts that Plaintiff never made any such allegations
5 at any time during her employment.

6 19. Defendant Hyatt has no information or belief on the subject sufficient to enable it
7 to answer the allegations contained in Paragraph 19 on page 5 of the Complaint, and basing its
8 denial on that ground, denies generally and specifically each and every allegation contained in
9 said paragraph. Defendant Hyatt further denies specifically and generally that Individual
10 Defendant Jimmy Flores was in Unit 7.

11 15₂. Defendant Hyatt has no information or belief on the subject sufficient to enable it
12 to answer the allegations contained in Paragraph 15₂ (the second paragraph 15 contained in the
13 Complaint) on page 5 of the Complaint, and basing its denial on that ground, denies generally and
14 specifically each and every allegation contained in said paragraph, except that Defendant Hyatt
15 admits that at some point in 2002, at her specific request, Plaintiff was assigned Unit 7 work
16 because she stated that she should be assigned Unit 7 work due to her seniority.

17 16₂. Defendant Hyatt has no information or belief on the subject sufficient to enable it
18 to answer the allegations contained in Paragraph 16₂ (the second paragraph 16 contained in the
19 Complaint) on page 5 of the Complaint, and basing its denial on that ground, denies generally and
20 specifically each and every allegation contained in said paragraph, except that Defendant Hyatt
21 admits that at some point, Plaintiff may have been the only female utility engineer at the hotel;
22 however, Defendant Hyatt also alleges that there previously had been another female utility
23 engineer at the hotel named Jennifer Schaff, who subsequently became an apprentice engineer,
24 and who then subsequently was promoted to maintenance engineer, then was promoted to
25 Assistant Director of Engineering (supervising both Individual Defendants and Plaintiff), and
26 then was promoted to Director of Engineering at a different Hyatt hotel.

27 17₂. Defendant Hyatt has no information or belief on the subject sufficient to enable it
28 to answer the allegations contained in Paragraph 17₂ (the second paragraph 17 contained in the

1 Complaint) on page 5 of the Complaint, and basing its denial on that ground, denies generally and
2 specifically each and every allegation contained in said paragraph, except that Defendant Hyatt
3 alleges that Plaintiff would have known prior to her assignment to Unit 7 work whether the utility
4 engineers performing Unit 7 work were all males, since Plaintiff knew all of the engineers in the
5 Engineering Department. Defendant Hyatt further specifically denies that Tom Phipps, Ron Gray
6 and Jimmy Flores performed Unit 7 work.

7 18₂. Defendant Hyatt has no information or belief on the subject sufficient to enable it
8 to answer the allegations contained in Paragraph 18₂ (the second paragraph 18 contained in the
9 Complaint) on pages 5-6 of the Complaint, and basing its denial on that ground, denies generally
10 and specifically each and every allegation contained in said paragraph, except that Defendant
11 Hyatt denies that Plaintiff was not given any training for Unit 7 work, inasmuch as all engineers
12 in the hotel received extensive training, including Plaintiff, and Plaintiff also was given additional
13 individual training due to her performance problems.

14 19₂. Defendant Hyatt has no information or belief on the subject sufficient to enable it
15 to answer the allegations contained in Paragraph 19₂ (the second paragraph 19 contained in the
16 Complaint) on page 6 of the Complaint, and basing its denial on that ground, denies generally and
17 specifically each and every allegation contained in said paragraph, except that Defendant Hyatt
18 also specifically denies that Plaintiff was “learning on the job” in 2002, as she already should
19 have had the ability to perform Unit 7 work, having worked as a utility engineer for three years.
20 Defendant Hyatt also admits that Plaintiff received a poor performance evaluation in December
21 2003.

22 20. Defendant Hyatt has no information or belief on the subject sufficient to enable it
23 to answer the allegations contained in Paragraph 20 of the Complaint, and basing its denial on
24 that ground, denies generally and specifically each and every allegation contained in said
25 paragraph, except that Defendant Hyatt admits that Larry Builta, then the Hotel’s Director of
26 Engineering, had conversations with Plaintiff regarding her performance problems, and that
27 Plaintiff was unhappy with the demands of Unit 7 utility engineering work, which can be more
28 demanding than Unit 8 work, as it requires prompt responses to guest requests as opposed to

1 merely preventive maintenance work.

2 21. Defendant Hyatt has no information or belief on the subject sufficient to enable it
3 to answer the allegations contained in Paragraph 21 of the Complaint, and basing its denial on
4 that ground, denies generally and specifically each and every allegation contained in said
5 paragraph, except that Defendant Hyatt admits that Plaintiff was put back on Unit 8 Rooms
6 Preventative Maintenance in August 2003.

7 22. Defendant Hyatt has no information or belief on the subject sufficient to enable it
8 to answer the allegations contained in Paragraph 22 of the Complaint, and basing its denial on
9 that ground, denies generally and specifically each and every allegation contained in said
10 paragraph, except that Defendant Hyatt admits that Plaintiff began performing Unit 7 Guest
11 Requests two days per week in 2005 based on the hotel's operational needs.

12 23. Defendant Hyatt has no information or belief on the subject sufficient to enable it
13 to answer the allegations contained in Paragraph 23 of the Complaint, and basing its denial on
14 that ground, denies generally and specifically each and every allegation contained in said
15 paragraph, except that Defendant Hyatt also specifically denies that Plaintiff was "enduring the
16 problems of training herself on the job," because Plaintiff attended extensive training for
17 engineering work in 2005. Defendant Hyatt further responds as follows.

18 23(a). Defendant Hyatt has no information or belief on the subject sufficient to enable it
19 to answer the allegations contained in Paragraph 23(a) of the Complaint, and basing its denial on
20 that ground, denies generally and specifically each and every allegation contained in said
21 paragraph, and further asserts that Plaintiff never made any such allegations at any time during
22 her employment.

23 23(b). Defendant Hyatt has no information or belief on the subject sufficient to enable it
24 to answer the allegations contained in Paragraph 23(b) of the Complaint, and basing its denial on
25 that ground, denies generally and specifically each and every allegation contained in said
26 paragraph, and further asserts that Plaintiff never made any such allegations at any time during
27 her employment.

28 23(c). Defendant Hyatt has no information or belief on the subject sufficient to enable it

1 to answer the allegations contained in Paragraph 23(c) of the Complaint, and basing its denial on
2 that ground, denies generally and specifically each and every allegation contained in said
3 paragraph, and further asserts that Plaintiff never made any such allegations at any time during
4 her employment.

5 23(d). Defendant Hyatt has no information or belief on the subject sufficient to enable it
6 to answer the allegations contained in Paragraph 23(d) of the Complaint, and basing its denial on
7 that ground, denies generally and specifically each and every allegation contained in said
8 paragraph, except that Defendant Hyatt admits that Mark Hergert was promoted to Assistant
9 Director of Engineering in 2005.

10 24. Defendant Hyatt has no information or belief on the subject sufficient to enable it
11 to answer the allegations contained in Paragraph 24 of the Complaint, and basing its denial on
12 that ground, denies generally and specifically each and every allegation contained in said
13 paragraph, except that Defendant Hyatt admits that Plaintiff was assigned to perform a plumbing
14 repair job on April 18, 2005 as part of her job responsibilities as a utility engineer, and that
15 although Plaintiff was assigned the task, Individual Defendant Tom Phipps completed the
16 plumbing repair job for her after Plaintiff called on her radio for assistance.

17 25. Defendant Hyatt denies generally and specifically each and every allegation
18 contained in Paragraph 25 of the Complaint, except that Defendant Hyatt admits that Plaintiff was
19 given a Final Written Warning and was suspended for five days by the hotel in April 2005 in lieu
20 of termination for failing to perform work satisfactorily, safely and effectively.

21 26. Defendant denies generally and specifically each and every allegation contained in
22 Paragraph 26 of the Complaint, except that Hyatt admits Plaintiff was assigned on May
23 16, 2006 to respond to a guest call regarding a broken hair dryer, that she called for assistance
24 regarding the call, that Individual Defendant Ron Gray assisted Plaintiff in connection with the
25 minor electrical assignment of checking on the electrical receptacle in the guest room, showed
26 Plaintiff how to use her voltmeter, showed Plaintiff the simple steps to replace the receptacle, and
27 reminded her to do the necessary lockout/tagout procedure, and that Plaintiff then confirmed that
28 she was able to complete the job; however, Plaintiff then was not able to complete the job, failed

1 to perform normal lockout/tagout procedures, and subsequently another utility engineer had to
2 complete the job for her after her shift ended. Defendant also admits that Plaintiff was suspended
3 pending investigation on May 23, 2005.

4 27. Defendant denies generally and specifically each and every allegation contained in
5 Paragraph 27 of the Complaint, except that Defendant Hyatt admits Plaintiff was called to Human
6 Resources on May 23, 2005.

7 28. Defendant Hyatt admits that Plaintiff was discharged from her employment on
8 May 24, 2005.

9 29. Defendant Hyatt denies generally and specifically each and every allegation
10 contained in Paragraph 29 of the Complaint.

11 30. Defendant Hyatt denies generally and specifically each and every allegation
12 contained in Paragraph 30 of the Complaint.

13 **ANSWER TO FIRST CAUSE OF ACTION**

14 (Breach of Contract) (Against Defendant Hyatt only)

15 31. Answering Paragraph 31 of the Complaint wherein Plaintiff incorporates
16 Paragraphs 1 through 30 (including the duplicative-numbered paragraphs) of the Complaint,
17 Defendant realleges and hereby incorporates by this reference its responses to said paragraphs as
18 though fully set forth herein.

19 32. Defendant Hyatt admits that Plaintiff was hired by the Hyatt Regency San
20 Francisco Airport on February 7, 1997 and was terminated from her employment on May 24,
21 2005. Defendant Hyatt further asserts that Plaintiff's breach of contract cause of action is
22 preempted by federal labor law.

23 33. Defendant Hyatt denies generally and specifically each and every allegation
24 contained in Paragraph 33 of the Complaint, except that Defendant Hyatt admits that Plaintiff
25 received salary increases during her employment as a utility engineer pursuant to the required
26 wage increases mandated under the Local 39 collective bargaining agreement which were in no
27 way based upon performance. Defendant specifically denies that Plaintiff was not given training
28 regarding Unit 7 work, inasmuch as all engineers in the hotel received extensive training,

1 including Plaintiff. Defendant Hyatt further asserts that Plaintiff's breach of contract cause of
2 action is preempted by federal labor law.

3 34. Defendant Hyatt denies generally and specifically each and every allegation
4 contained in Paragraph 34 of the Complaint, except that Defendant Hyatt alleges that Plaintiff
5 was a union employee covered by a written collective bargaining agreement between
6 International Union of Operating Engineers, AFL-CIO, Stationary Engineers, Local 39 and the
7 Hyatt Regency San Francisco Airport ("the hotel"), which written agreement covered the terms
8 and conditions of Plaintiff's employment. Defendant Hyatt further asserts that Plaintiff's breach
9 of contract cause of action is preempted by federal labor law.

10 35. Defendant Hyatt denies generally and specifically each and every allegation
11 contained in Paragraph 35 of the Complaint, and Defendant Hyatt asserts that an "adequate and
12 effective investigation" was conducted by the Hotel. Defendant Hyatt further asserts that
13 Plaintiff's breach of contract cause of action is preempted by federal labor law.

14 36. Defendant Hyatt denies generally and specifically each and every allegation
15 contained in Paragraph 36 of the Complaint. Defendant Hyatt further asserts that Plaintiff's
16 breach of contract cause of action is preempted by federal labor law.

17 37. Defendant Hyatt denies generally and specifically each and every allegation
18 contained in Paragraph 37 of the Complaint. Defendant Hyatt further asserts that Plaintiff's
19 breach of contract cause of action is preempted by federal labor law.

20 38. Defendant Hyatt denies generally and specifically each and every allegation
21 contained in Paragraph 38 of the Complaint. Defendant Hyatt further asserts that Plaintiff's
22 breach of contract cause of action is preempted by federal labor law.

23 **ANSWER TO SECOND CAUSE OF ACTION**

24 (Breach of Covenant of Good Faith and Fair Dealing) (Against Defendant Hyatt only)

25 39. Answering Paragraph 39 of the Complaint wherein Plaintiff incorporates
26 Paragraphs 1 through 38 of the Complaint (including the duplicative-numbered paragraphs),
27 Defendant Hyatt realleges and hereby incorporates by this reference its responses to said
28 paragraphs as though fully set forth herein.

1 40. Defendant Hyatt denies generally and specifically each and every allegation
 2 contained in Paragraph 40 of the Complaint, except that Defendant Hyatt alleges that Plaintiff
 3 was a union employee covered by a written collective bargaining agreement between
 4 International Union of Operating Engineers, AFL-CIO, Stationary Engineers, Local 39 and the
 5 Hyatt Regency San Francisco Airport ("the hotel"), which written agreement covered the terms
 6 and conditions of Plaintiff's employment. Defendant Hyatt further asserts that Plaintiff's breach
 7 of the covenant of good faith and fair dealing cause of action is preempted by federal labor law.

8 41. Defendant Hyatt denies generally and specifically each and every allegation
 9 contained in Paragraph 41 of the Complaint. Defendant Hyatt further asserts that Plaintiff's
 10 breach of the covenant of good faith and fair dealing cause of action is preempted by federal labor
 11 law.

12 42. Defendant Hyatt denies generally and specifically each and every allegation
 13 contained in Paragraph 42 of the Complaint. Defendant Hyatt further asserts that Plaintiff's
 14 breach of the covenant of good faith and fair dealing cause of action is preempted by federal labor
 15 law.

16 43. Defendant Hyatt denies generally and specifically each and every allegation
 17 contained in Paragraph 43 of the Complaint. Defendant Hyatt further asserts that Plaintiff's
 18 breach of the covenant of good faith and fair dealing cause of action is preempted by federal labor
 19 law.

20 44. Defendant Hyatt denies generally and specifically each and every allegation
 21 contained in Paragraph 44 of the Complaint. Defendant Hyatt further asserts that Plaintiff's
 22 breach of the covenant of good faith and fair dealing cause of action is preempted by federal labor
 23 law.

24 **ANSWER TO THIRD CAUSE OF ACTION**

25 (Discrimination)

26 **ANSWER TO COUNT 1**

27 (Race-Based Discrimination)

28 45. Answering Paragraph 45 of the Complaint wherein Plaintiff incorporates

1 Paragraphs 1 through 44 of the Complaint (including the duplicative-numbered paragraphs),
2 Defendant Hyatt realleges and hereby incorporates by this reference its responses to said
3 paragraphs as though fully set forth herein.

4 46. Defendant Hyatt has no information or belief on the subject sufficient to enable it
5 to answer the allegations contained in Paragraph 46 of the Complaint, and basing its denial on
6 that ground, denies generally and specifically each and every allegation contained in said
7 paragraph, except that Defendant Hyatt asserts that no response is required to the first sentence of
8 Paragraph 46 of the Complaint.

9 47. Defendant Hyatt denies generally and specifically each and every allegation
10 contained in Paragraph 47 of the Complaint, except that Defendant Hyatt admits that Plaintiff's
11 employment was terminated on May 24, 2005. Defendant Hyatt also specifically denies that
12 Plaintiff was "denied her right to a thorough investigation" and denies that Plaintiff was
13 "subjected to different terms, conditions and privileges of employment than those to which
14 Defendant subjected similarly situated employees, on account of her race and national origin."

15 48. Defendant Hyatt denies generally and specifically each and every allegation
16 contained in Paragraph 48 of the Complaint.

17 49. Defendant Hyatt denies generally and specifically each and every allegation
18 contained in Paragraph 49 of the Complaint.

19 50. Defendant Hyatt denies generally and specifically each and every allegation
20 contained in Paragraph 50 of the Complaint. Defendant Hyatt further asserts that any allegations
21 regarding harassment or hostile work environment are barred because Plaintiff failed to exhaust
22 her administrative remedies with respect to any such allegations.

23 51. Defendant Hyatt denies generally and specifically each and every allegation
24 contained in Paragraph 51 of the Complaint. Defendant Hyatt further asserts that any allegations
25 regarding harassment or hostile work environment are barred because Plaintiff failed to exhaust
26 her administrative remedies with respect to any such allegations.

27 52. Defendant Hyatt has no information or belief on the subject sufficient to enable it
28 to answer the allegations contained in Paragraph 52 of the Complaint, and basing its denial on

1 that ground, denies generally and specifically each and every allegation contained in said
 2 paragraph, except that Defendant Hyatt admits that Plaintiff filed a complaint with the
 3 Department of Fair Employment & Housing on May 16, 2006 alleging that she was fired because
 4 of her sex, age, race/color, national origin/ancestry, and sexual orientation. Defendant Hyatt
 5 asserts that any allegations regarding harassment or hostile work environment are barred because
 6 Plaintiff failed to exhaust her administrative remedies with respect to any such allegations.

7 53. Defendant Hyatt denies generally and specifically each and every allegation
 8 contained in Paragraph 53 of the Complaint.

9 54. Defendant Hyatt denies generally and specifically each and every allegation
 10 contained in Paragraph 54 of the Complaint.

11 55. Defendant Hyatt denies generally and specifically each and every allegation
 12 contained in Paragraph 55 of the Complaint.

13 **ANSWER TO COUNT 2**

14 (Age-Based Discrimination)

15 56. Answering Paragraph 56 of the Complaint wherein Plaintiff incorporates
 16 Paragraphs 1 through 55 of the Complaint (including the duplicative-numbered paragraphs),
 17 Defendant Hyatt realleges and hereby incorporates by this reference its responses to said
 18 paragraphs as though fully set forth herein.

19 57. Defendant Hyatt has no information or belief on the subject sufficient to enable it
 20 to answer the allegations contained in Paragraph 57 of the Complaint, and basing its denial on
 21 that ground, denies generally and specifically each and every allegation contained in said
 22 paragraph, except that Defendant Hyatt asserts that no response is required to the first sentence of
 23 Paragraph 57 of the Complaint.

24 58. Defendant Hyatt denies generally and specifically each and every allegation
 25 contained in Paragraph 58 of the Complaint, except that Defendant Hyatt admits that Plaintiff's
 26 employment was terminated on May 24, 2005. Defendant Hyatt also specifically denies that
 27 Plaintiff was "denied her right to a thorough investigation" and denies that Plaintiff was
 28 "subjected to different terms, conditions and privileges of employment than those to which

1 Defendant subjected similarly situated employees, on account of her age.”

2 59. Defendant Hyatt denies generally and specifically each and every allegation
3 contained in Paragraph 59 of the Complaint.

4 60. Defendant Hyatt denies generally and specifically each and every allegation
5 contained in Paragraph 60 of the Complaint. Defendant Hyatt further asserts that any allegations
6 regarding harassment or hostile work environment are barred because Plaintiff failed to exhaust
7 her administrative remedies with respect to any such allegations.

8 61. Defendant Hyatt denies generally and specifically each and every allegation
9 contained in Paragraph 61 of the Complaint. Defendant Hyatt asserts that any allegations
10 regarding harassment or hostile work environment are barred because Plaintiff failed to exhaust
11 her administrative remedies with respect to any such allegations.

12 62. Defendant Hyatt denies generally and specifically each and every allegation
13 contained in Paragraph 62 of the Complaint. Defendant Hyatt asserts that any allegations
14 regarding harassment or hostile work environment are barred because Plaintiff failed to exhaust
15 her administrative remedies with respect to any such allegations.

16 63. Defendant Hyatt has no information or belief on the subject sufficient to enable it
17 to answer the allegations contained in Paragraph 63 of the Complaint, and basing its denial on
18 that ground, denies generally and specifically each and every allegation contained in said
19 paragraph, except that Defendant Hyatt admits that Plaintiff filed a complaint with the
20 Department of Fair Employment & Housing on May 16, 2006 alleging that she was fired because
21 of her sex, age, race/color, national origin/ancestry, and sexual orientation. Defendant Hyatt
22 further asserts that any allegations regarding harassment or hostile work environment are barred
23 because Plaintiff failed to exhaust her administrative remedies with respect to any such
24 allegations.

25 64. Defendant Hyatt denies generally and specifically each and every allegation
26 contained in Paragraph 64 of the Complaint.

27 65. Defendant Hyatt denies generally and specifically each and every allegation
28 contained in Paragraph 65 of the Complaint.

66. Defendant Hyatt denies generally and specifically each and every allegation contained in Paragraph 66 of the Complaint.

ANSWER TO COUNT 3

(Discrimination Based on Sex)

67. Answering Paragraph 67 of the Complaint wherein Plaintiff incorporates Paragraphs 1 through 66 of the Complaint (including the duplicative-numbered paragraphs), Defendant Hyatt realleges and hereby incorporates by this reference its responses to said paragraphs as though fully set forth herein.

68. Defendant Hyatt has no information or belief on the subject sufficient to enable it to answer the allegations contained in Paragraph 68 of the Complaint, and basing its denial on that ground, denies generally and specifically each and every allegation contained in said paragraph, except that Defendant Hyatt asserts that no response is required to the first sentence of Paragraph 68 of the Complaint. Defendant Hyatt also admits that Plaintiff is a female.

69. Defendant Hyatt denies generally and specifically each and every allegation contained in Paragraph 69 of the Complaint, except that Defendant Hyatt admits that Plaintiff's employment was terminated on May 24, 2005. Defendant Hyatt also specifically denies that Plaintiff was "denied her right to a thorough investigation" and denies that Plaintiff was "subjected to different terms, conditions and privileges of employment than those to which Defendant subjected similarly situated employees, on account of her sex."

70. Defendant Hyatt denies generally and specifically each and every allegation contained in Paragraph 70 of the Complaint.

71. Defendant Hyatt has no information or belief on the subject sufficient to enable it to answer the allegations contained in Paragraph 71 of the Complaint, and basing its denial on that ground, denies generally and specifically each and every allegation contained in said paragraph, and further asserts that Plaintiff never made any such allegations at any time during her employment. Defendant Hyatt also asserts that any allegations regarding harassment or hostile work environment are barred because Plaintiff failed to exhaust her administrative remedies with respect to any such allegations.

1 72. Defendant Hyatt denies generally and specifically each and every allegation
2 contained in Paragraph 72 of the Complaint. Defendant Hyatt further asserts that any allegations
3 regarding harassment or hostile work environment are barred because Plaintiff failed to exhaust
4 her administrative remedies with respect to any such allegations.

5 73. Defendant Hyatt denies generally and specifically each and every allegation
6 contained in Paragraph 73 of the Complaint. Defendant Hyatt further asserts that any allegations
7 regarding harassment or hostile work environment are barred because Plaintiff failed to exhaust
8 her administrative remedies with respect to any such allegations.

9 74. Defendant Hyatt denies generally and specifically each and every allegation
10 contained in Paragraph 74 of the Complaint. Defendant Hyatt further asserts that any allegations
11 regarding harassment or hostile work environment are barred because Plaintiff failed to exhaust
12 her administrative remedies with respect to any such allegations.

13 75. Defendant Hyatt has no information or belief on the subject sufficient to enable it
14 to answer the allegations contained in Paragraph 75 of the Complaint, and basing its denial on
15 that ground, denies generally and specifically each and every allegation contained in said
16 paragraph, except that Defendant Hyatt admits that Plaintiff filed a complaint with the
17 Department of Fair Employment & Housing on May 16, 2006 alleging that she was fired because
18 of her sex, age, race/color, national origin/ancestry, and sexual orientation. Defendant
19 Hyatt further asserts that any allegations regarding harassment or hostile work environment are
20 barred because Plaintiff failed to exhaust her administrative remedies with respect to any such
21 allegations.

22 76. Defendant Hyatt denies generally and specifically each and every allegation
23 contained in Paragraph 76 of the Complaint.

24 77. Defendant Hyatt denies generally and specifically each and every allegation
25 contained in Paragraph 77 of the Complaint.

26 78. Defendant Hyatt denies generally and specifically each and every allegation
27 contained in Paragraph 78 of the Complaint.
28

ANSWER TO COUNT 4

(Discrimination Based on Sexual Orientation)

79. Answering Paragraph 79 of the Complaint wherein Plaintiff incorporates Paragraphs 1 through 78 of the Complaint (including the duplicative-numbered paragraphs), Defendant Hyatt realleges and hereby incorporates by this reference its responses to said paragraphs as though fully set forth herein.

80. Defendant Hyatt has no information or belief on the subject sufficient to enable it to answer the allegations contained in Paragraph 80 of the Complaint, and basing its denial on that ground, denies generally and specifically each and every allegation contained in said paragraph, except that Defendant Hyatt asserts that no response is required to the first sentence of Paragraph 80 of the Complaint. Defendant Hyatt also admits that Plaintiff is female, and that she stated to co-workers that she was a lesbian.

81. Defendant Hyatt denies generally and specifically each and every allegation contained in Paragraph 81 of the Complaint, except that Defendant Hyatt admits that Plaintiff's employment was terminated on May 24, 2005. Defendant Hyatt also specifically denies that Plaintiff was "denied her right to a thorough investigation" and denies that Plaintiff was "subjected to different terms, conditions and privileges of employment than those to which Defendant subjected similarly situated employees, on account of her sex and/or her sexual orientation."

82. Defendant Hyatt denies generally and specifically each and every allegation contained in Paragraph 82 of the Complaint.

83. Defendant Hyatt has no information or belief on the subject sufficient to enable it to answer the allegations contained in Paragraph 83 of the Complaint, and basing its denial on that ground, denies generally and specifically each and every allegation contained in said paragraph, and further asserts that Plaintiff never made any such allegations at any time during her employment. Defendant Hyatt also asserts that any allegations regarding harassment or hostile work environment are barred because Plaintiff failed to exhaust her administrative remedies with respect to any such allegations.

1 84. Defendant Hyatt denies generally and specifically each and every allegation
2 contained in Paragraph 84 of the Complaint. Defendant Hyatt asserts that any allegations
3 regarding harassment or hostile work environment are barred because Plaintiff failed to exhaust
4 her administrative remedies with respect to any such allegations.

5 85. Defendant Hyatt denies generally and specifically each and every allegation
6 contained in Paragraph 85 of the Complaint. Defendant Hyatt asserts that any allegations
7 regarding harassment or hostile work environment are barred because Plaintiff failed to exhaust
8 her administrative remedies with respect to any such allegations.

9 86. Defendant Hyatt denies generally and specifically each and every allegation
10 contained in Paragraph 86 of the Complaint. Defendant Hyatt asserts that any allegations
11 regarding harassment or hostile work environment are barred because Plaintiff failed to exhaust
12 her administrative remedies with respect to any such allegations.

13 87. Defendant Hyatt has no information or belief on the subject sufficient to enable it
14 to answer the allegations contained in Paragraph 87 of the Complaint, and basing its denial on
15 that ground, denies generally and specifically each and every allegation contained in said
16 paragraph, except that Defendant Hyatt admits that Plaintiff filed a complaint with the
17 Department of Fair Employment & Housing on May 16, 2006 alleging that she was fired because
18 of her sex, age, race/color, national origin/ancestry, and sexual orientation. Defendant Hyatt
19 asserts that any allegations regarding harassment or hostile work environment are barred because
20 Plaintiff failed to exhaust her administrative remedies with respect to any such allegations.

21 88. Defendant Hyatt denies generally and specifically each and every allegation
22 contained in Paragraph 88 of the Complaint.

23 89. Defendant Hyatt denies generally and specifically each and every allegation
24 contained in Paragraph 89 of the Complaint.

25 90. Defendant Hyatt denies generally and specifically each and every allegation
26 contained in Paragraph 90 of the Complaint.

ANSWER TO FOURTH CAUSE OF ACTION

(Infliction of Emotional Distress)

ANSWER TO COUNT 1

91. Defendant Hyatt asserts that no response is required to Paragraph 91 of the Complaint because this count is alleged against Individual Defendants alone.

92. Defendant Hyatt asserts that no response is required to Paragraph 92 of the Complaint because this count is alleged against Individual Defendants alone.

93. Defendant Hyatt asserts that no response is required to Paragraph 93 of the Complaint because this count is alleged against Individual Defendants alone.

94. Defendant Hyatt asserts that no response is required to Paragraph 94 of the Complaint because this count is alleged against Individual Defendants alone.

95. Defendant Hyatt asserts that no response is required to Paragraph 95 of the Complaint because this count is alleged against Individual Defendants alone.

ANSWER TO COUNT 2 (Against Defendant Hyatt Only)

96. Defendant Hyatt has no information or belief on the subject sufficient to enable it to answer the allegations contained in Paragraph 96 of the Complaint, and basing its denial on that ground, denies generally and specifically each and every allegation contained in said paragraph, except that Defendant denies that it failed to conduct a thorough, adequate and impartial investigation of any complaint made at any time, and further asserts that Plaintiff never made any harassment allegations at any time during her employment. Defendant Hyatt also asserts that any allegations regarding harassment or hostile work environment are barred because Plaintiff failed to exhaust her administrative remedies with respect to any such allegations.

96(a). Defendant Hyatt has no information or belief on the subject sufficient to enable it to answer the allegations contained in Paragraph 96(a) of the Complaint, and basing its denial on that ground, denies generally and specifically each and every allegation contained in said paragraph, except that Defendant Hyatt specifically denies that Plaintiff ever made any sexual harassment complaint at any time, and further specifically denies that its Human Resources personnel were "ill-equipped" to investigate a complaint by any employee, including Plaintiff.

1 Defendant Hyatt also asserts that any allegations regarding harassment or hostile work
 2 environment are barred because Plaintiff failed to exhaust her administrative remedies with
 3 respect to any such allegations.

4 96(b). Defendant Hyatt denies generally and specifically each and every allegation
 5 contained in Paragraph 96(b) of the Complaint, except that Defendant Hyatt admits that Plaintiff
 6 was suspended pending investigation and later terminated effective May 24, 2005.

7 97. Defendant Hyatt has no information or belief on the subject sufficient to enable it
 8 to answer the allegations contained in Paragraph 97 of the Complaint, and basing its denial on
 9 that ground, denies generally and specifically each and every allegation contained in said
 10 paragraph, except that Defendant Hyatt specifically denies that Plaintiff was "left on her own to
 11 learn the new challenges of her job by herself," inasmuch as all engineers in the hotel received
 12 extensive training, including and especially Plaintiff.

13 98. Defendant Hyatt denies generally and specifically each and every allegation
 14 contained in Paragraph 98 of the Complaint, except that Defendant has no information or belief
 15 on the subject sufficient to enable it to answer the last clause of Paragraph 98. Defendant Hyatt
 16 asserts that any allegations regarding harassment or hostile work environment are barred because
 17 Plaintiff failed to exhaust her administrative remedies with respect to any such allegations.

18 99. Defendant Hyatt denies generally and specifically each and every allegation
 19 contained in Paragraph 99 of the Complaint.

20 100. Defendant Hyatt denies generally and specifically each and every allegation
 21 contained in Paragraph 100 of the Complaint.

22 **ANSWER TO FIFTH CAUSE OF ACTION**

23 (Failure to Take Steps to Prevent Discrimination) (Against Defendant Hyatt only)

24 101. Answering Paragraph 101 of the Complaint wherein Plaintiff incorporates
 25 Paragraphs 1 through 100 of the Complaint (including the duplicative-numbered paragraphs),
 26 Defendant Hyatt realleges and hereby incorporates by this reference its responses to said
 27 paragraphs as though fully set forth herein.

28 102. Defendant Hyatt has no information or belief on the subject sufficient to enable it

1 to answer the allegations contained in Paragraph 102 of the Complaint, and basing its denial on
2 that ground, denies generally and specifically each and every allegation contained in said
3 paragraph, except that Defendant Hyatt asserts that no response is required to said paragraph.

4 103. Defendant Hyatt denies generally and specifically each and every allegation
5 contained in Paragraph 103 of the Complaint. Defendant Hyatt also asserts that any allegations
6 regarding harassment or hostile work environment are barred because Plaintiff failed to exhaust
7 her administrative remedies with respect to any such allegations.

8 104. Defendant Hyatt denies generally and specifically each and every allegation
9 contained in Paragraph 104 of the Complaint. Defendant Hyatt also asserts that any allegations
10 regarding harassment or hostile work environment are barred because Plaintiff failed to exhaust
11 her administrative remedies with respect to any such allegations.

12 105. Defendant Hyatt denies generally and specifically each and every allegation
13 contained in Paragraph 105 of the Complaint. Defendant Hyatt also asserts that any allegations
14 regarding harassment or hostile work environment are barred because Plaintiff failed to exhaust
15 her administrative remedies with respect to any such allegations.

16 106. Defendant Hyatt has no information or belief on the subject sufficient to enable it
17 to answer the allegations contained in Paragraph 106 of the Complaint, and basing its denial on
18 that ground, denies generally and specifically each and every allegation contained in said
19 paragraph, except that Defendant Hyatt admits that Plaintiff filed a complaint with the
20 Department of Fair Employment & Housing on May 16, 2006 alleging that she was fired because
21 of her sex, age, race/color, national origin/ancestry, and sexual orientation. Defendant Hyatt
22 asserts that any allegations regarding harassment or hostile work environment are barred because
23 Plaintiff failed to exhaust her administrative remedies with respect to any such allegations.

24 107. Defendant Hyatt denies generally and specifically each and every allegation
25 contained in Paragraph 107 of the Complaint.

26 108. Defendant Hyatt denies generally and specifically each and every allegation
27 contained in Paragraph 108 of the Complaint.

28 109. Defendant Hyatt denies generally and specifically each and every allegation

1 contained in Paragraph 109 of the Complaint.

2 **RECOVERY**

3 Defendant Hyatt further specifically denies that Plaintiff has suffered any injury or
4 damages of any kind attributable in any way to any act or omission on the part of Defendant
5 Hyatt or any other person or entity.

6 **AFFIRMATIVE DEFENSES**

7 **FIRST AFFIRMATIVE DEFENSE**

8 (Failure to State Facts Sufficient to Constitute a Cause of Action)

9 As a first and separate defense, and solely by way of an alternative defense, not to be
10 construed as an admission, Defendant Hyatt alleges that the Complaint and each cause of action
11 (and count) therein fails to state facts sufficient to constitute a cause of action against Defendant
12 Hyatt.

13 **SECOND AFFIRMATIVE DEFENSE**

14 (Preemption by Federal Labor Law)

15 As a second and separate defense, and solely by way of an alternative defense, not to be
16 construed as an admission, Defendant Hyatt alleges that to the extent that Plaintiff seeks recovery
17 for alleged injury caused by alleged actions that were governed by the terms of the collective
18 bargaining agreement between the Hyatt Regency San Francisco Airport and Stationary
19 Engineers Union, Local 39 (of which Plaintiff was a member), the exclusive remedy for such an
20 injury, if any, is governed by the mandatory arbitration clause of the collective bargaining
21 agreement pursuant to 29 U.S.C. § 185.

22 **THIRD AFFIRMATIVE DEFENSE**

23 (No Basis for Compensatory and/or Emotional Distress Damages)

24 As a third and separate defense, and solely by way of an alternative defense, not to be
25 construed as an admission, Defendant Hyatt alleges that Plaintiff has failed to state facts sufficient
26 to provide a legal or factual basis to award compensatory damages or damages for emotional
27 distress to Plaintiff under any of the causes of action alleged in the Complaint.

FOURTH AFFIRMATIVE DEFENSE

(No Basis for Punitive Damages)

As a fourth and separate defense, and solely by way of an alternative defense, not to be construed as an admission, Defendant Hyatt alleges that Plaintiff has failed to state facts sufficient to provide a legal or factual basis to award punitive damages under any causes of action alleged in the Complaint, and further allege that excessive punitive damage awards violate the due process clause of the United State Constitution and California Constitution.

FIFTH AFFIRMATIVE DEFENSE

(Punitive Damages Bar)

As a fifth and separate defense, and solely by way of an alternative defense, not to be construed as an admission, Defendant Hyatt alleges that any claim for punitive damages is barred by California Civil Code Section 3294(b).

SIXTH AFFIRMATIVE DEFENSE

(No Basis for Attorneys' Fees)

As a sixth and separate defense, and solely by way of an alternative defense, not to be construed as an admission, Defendant Hyatt alleges that Plaintiff has failed to state facts sufficient to provide legal or factual basis to award attorneys' fees or costs to Plaintiff.

SEVENTH AFFIRMATIVE DEFENSE

(Failure to Exhaust Administrative Remedies)

As a seventh and separate defense, and solely by way of an alternative defense, not to be construed as an admission, Defendant Hyatt alleges that Plaintiff's causes of action, or parts therein, are barred to the extent that Plaintiff failed to exhaust her administrative remedies.

EIGHTH AFFIRMATIVE DEFENSE

(Privilege/Justification)

As an eighth and separate defense, and solely by way of an alternative defense, not to be construed as an admission, Defendant Hyatt alleges that its conduct toward Plaintiff, if any, was privileged and/or justified.

NINTH AFFIRMATIVE DEFENSE

(No Malice/Good Faith Belief)

As a ninth and separate defense, and solely by way of an alternative defense, not to be construed as an admission, Defendant Hyatt alleges that at all time and places mentioned in the Complaint, Defendant Hyatt acted reasonably, with due care, without malice, and with good faith belief in the propriety of its conduct at all times material to the allegation in the Complaint.

TENTH AFFIRMATIVE DEFENSE

(Barred by Workers' Compensation)

As a tenth and separate defense, and solely by way of an alternative defense, not to be construed as an admission, Defendant Hyatt alleges that to the extent that Plaintiff seeks recovery for alleged pain, suffering, mental anguish and/or emotional distress, then, pursuant to California Labor Code Section 3601, the exclusive remedy for such injury, if any, is governed by the California Workers' Compensation Act, California Labor Code Sections 3200 *et seq.*

ELEVENTH AFFIRMATIVE DEFENSE

(Plaintiff Unreasonably Failed to Utilize Procedures to Prevent Harassment/Discrimination)

As an eleventh and separate defense, and solely by way of an alternative defense, not to be construed as an admission, Defendant Hyatt alleges that it exercised reasonable care to prevent and correct promptly any harassing and/or discriminatory behavior in the workplace, including the implementation of a policy prohibiting harassment, which was in place at all relevant times and known by the Plaintiff, and that if any harassment and/or discrimination occurred, which Defendant Hyatt denies, Plaintiff unreasonably failed to use any of the preventative and corrective measures provided by Defendant Hyatt.

TWELFTH AFFIRMATIVE DEFENSE

(Avoidable Consequences)

As a twelfth and separate defense, and solely by way of an alternative defense, not to be construed as an admission, Defendant Hyatt alleges that it exercised reasonable care to prevent and promptly correct any purported harassing or discriminatory behavior, and that if any harassment or discrimination of Plaintiff occurred (which Defendant Hyatt denies), Plaintiff

1 unreasonably failed to take advantage of any preventive or corrective opportunities provided by
2 Defendant Hyatt or to avoid harm otherwise, which would have prevented at least some of the
3 alleged injury suffered by Plaintiff.

4 **THIRTEENTH AFFIRMATIVE DEFENSE**

5 (Failure to Mitigate)

6 As a thirteenth and separate defense, and solely by way of an alternative defense, not to be
7 construed as an admission, Defendant Hyatt alleges that Plaintiff's damages, if any, are barred
8 because she failed to mitigate damages, and any recovery of damages, if there be any, should be
9 reduced in the amount by which she should have mitigated those alleged damages.

10 **FOURTEENTH AFFIRMATIVE DEFENSE**

11 (Failure to Complain)

12 As a fourteenth and separate defense, and solely by way of an alternative defense, not to
13 be construed as an admission, Defendant Hyatt alleges that to the extent that Plaintiff failed to
14 complain about certain acts or omissions alleged in the Complaint, such failure to complain
15 constitutes a bar to Plaintiff's recovery of any damages.

16 **FIFTEENTH AFFIRMATIVE DEFENSE**

17 (Statute of Limitations)

18 As a fifteenth and separate defense, and solely by way of an alternative defense, not to be
19 construed as an admission, Defendant Hyatt alleges that the causes of action alleged against it, or
20 parts therein, are barred by the applicable statute of limitations, including but not limited to those
21 set forth in California Gov't Code Section 12960 and California Code of Civil Procedure Section
22 340.

23 **SIXTEENTH AFFIRMATIVE DEFENSE**

24 (Laches)

25 As a sixteenth and separate defense, and solely by way of an alternative defense, not to be
26 construed as an admission, Defendant Hyatt alleges that Plaintiff's delay in asserting her alleged
27 claims bars her claims set forth in the Complaint by the doctrine of laches.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Waiver/Estoppel/Unclean Hands)

As a seventeenth and separate defense, and solely by way of an alternative defense, not to be construed as an admission, Defendant Hyatt alleges that Plaintiff's recovery in this action is barred by the doctrines of waiver, estoppel, and unclean hands in connection with her job performance and conduct.

EIGHTEENTH AFFIRMATIVE DEFENSE

(No Injury to Plaintiff)

As an eighteenth and separate defense, and solely by way of an alternative defense, not to be construed as an admission, Defendant Hyatt alleges that Plaintiff has not suffered any injury, damage, loss or harm due to any actions by the Individual Defendants.

NINETEENTH AFFIRMATIVE DEFENSE

(Consent)

As a nineteenth affirmative defense, and solely by way of an alternative defense, not to be construed as an admission, Defendant Hyatt alleges that Plaintiff consented to and approved the acts and omissions about which Plaintiff now complains. Accordingly, Plaintiff is now barred from pursuing this action.

TWENTIETH AFFIRMATIVE DEFENSE

(No Wrongful Conduct By Managing Agents)

As a twentieth affirmative defense, and solely by way of an affirmative defense, not to be construed as an admission, Defendant Hyatt alleges that at all times mentioned in the Complaint, Plaintiff has not alleged and/or cannot demonstrate any wrongful conduct by any managing agents of Hyatt, and Defendant Hyatt further alleges that it never ratified or condoned any unlawful or tortious conduct of any employee or individual at Hyatt.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Causation)

As a twenty-first and separate defense, and solely by way of an alternative defense, not to be construed as an admission, Defendant Hyatt alleges that none of the injuries alleged in the

1 Complaint were proximately caused by any of the conduct of Hyatt as alleged in the Complaint.

2 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

3 (Legitimate Business Reasons)

4 As a twenty-second and separate defense, and solely by way of an alternative defense, not
5 to be construed as an admission, Defendant Hyatt alleges that it had legitimate business reasons,
6 unrelated to any classification protected under the Fair Employment & Housing Act, for any
7 employment actions it took with regard to Plaintiff.

8 **RESERVATION OF DEFENSES**

9 Defendant Hyatt reserves the right to raise additional affirmative defenses as they become
10 known during the course of litigation.

11 WHEREFORE, Defendant Hyatt prays for judgment as follows:

- 12 1. That judgment be entered in favor of Defendant Hyatt and that Plaintiff take
13 nothing by her Complaint;
- 14 2. That the Complaint herein be dismissed;
- 15 3. That Defendant Hyatt be awarded its costs of suit incurred in the defense of this
16 action, including attorneys' fees; and
- 17 4. That Defendant Hyatt be awarded such other and further relief as the Court deems
18 proper.

19 Dated: March 20, 2008

FOLGER LEVIN & KAHN LLP

21 /s/ *Lisa M. van Krieken*

22 Lisa M. van Krieken
23 Attorneys for Defendants
24 Hyatt Corporation dba Hyatt Regency San Francisco
25 Airport, Jimmy Flores, Ron Gray, Tom Phipps and
26 Jose Reyes
27
28